

Claimant alleged an injury from February 25, 1992 to February 11, 1994, to her left foot. After receiving medical care in February 1992, claimant returned to work for the respondent with no additional problems. In the fall of 1992, claimant was assigned the

responsibility of caring for a wheelchair-bound patient, which required that she push the patient in his wheelchair on a regular basis. This pushing activity caused problems with claimant's left foot and she noticed a knot forming on the inside of the foot. This knot continued to grow and to bother claimant from the time of its formation through February 11, 1994, at which time she was being examined by Dr. Tisdale for a non work-related condition. Dr. Tisdale advised claimant the foot condition could be work related.

Claimant advised Doug Hamel, her supervisor, of her problem sometime between February 15 and February 22, 1994. She was referred to Dr. Richman, the company doctor, who referred her back to Dr. Tisdale. Dr. Tisdale performed surgery on March 22, 1994. Unfortunately, this surgery was unsuccessful and claimant was required to undergo two cauterizations, one on April 28 and another on May 6, 1994. These treatments also proved unsuccessful and claimant underwent a second surgery on May 12, 1994. On June 2, 1994, claimant's attorney caused a Notice of Intent to be served upon the respondent. Said attorney filed an E-1 on June 10, 1994, both documents being within two-hundred (200) days of February 11, 1994. (See K.S.A. 44-520a).

K.S.A. 44-551 limits the rights of a party to appeal from a preliminary order to situations where it is alleged that the Administrative Law Judge exceeded the Administrative Law Judge's jurisdiction in granting or denying the relief requested at the preliminary hearing.

K.S.A. 44-534a allows appeal from a preliminary hearing for the specific jurisdictional issues regarding whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply.

The Appeals Board finds it does have jurisdiction to hear matters regarding whether claimant suffered accidental injury arising out of and in the course of her employment, whether notice was timely given pursuant to K.S.A. 44-520 and whether written claim was timely submitted pursuant to K.S.A. 44-520a.

Claimant alleged a series of injuries culminating on February 11, 1994, to her left foot as a result of the activities of pushing a wheelchair at work. K.S.A. 44-501 does make it the claimant's burden to prove the various conditions on which the claimant's right depends. The Appeals Board finds claimant has proven by a preponderance of the credible evidence that she suffered accidental injury arising out of and in the course of her employment while working for the respondent through February 11, 1994.

Claimant further testified to discussions with Doug Hamel, her supervisor, regarding the problems with her foot between the periods of February 15 and February 22, 1994. The ten (10) days subsequent to claimant's alleged injury date of February 11, 1994, would terminate on February 21, 1994. The Appeals Board finds, for purposes of preliminary hearing, claimant did provide notice pursuant to K.S.A. 44-520 within ten (10) days of the alleged injury of February 11, 1994. The uncontradicted testimony of the claimant, not having been shown to be untrustworthy, is accepted by the Appeals Board. See Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

The Appeals Board further finds claimant's written claims of June 2 and June 10, 1994, are within two-hundred (200) days of claimant's injury date of February 11, 1994. As such, the requirements of K.S.A. 44-520a have been met and claimant is entitled to compensation for preliminary hearing purposes.

The Administrative Law Judge, in denying claimant benefits, did not decide whether claimant was entitled to additional benefits or whether the respondent was or is obligated to pay for the past medical care received by claimant. K.S.A. 44-551(b)(1) grants the

Appeals Board authority to remand any matter to the Administrative Law Judge for further proceedings. The Appeals Board remands this matter back to the Administrative Law Judge for further findings consistent with this Order.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge George R. Robertson, dated August 22, 1994, is reversed and this matter is remanded back to the Administrative Law Judge for further findings consistent with this decision. The Appeals Board does not retain jurisdiction over this matter. As such, should the parties dispute any future rulings of the Administrative Law Judge in this matter, the appropriate procedural steps must be taken to effect an appeal to the Appeals Board.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James S. Oswalt, Hutchinson, KS  
P. Kelly Donley, Wichita, KS  
George R. Robertson, Administrative Law Judge  
George Gomez, Director